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Date: December 17, 2008

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Applicants(s): Gregory J. Mesaros

Serial No: 09/426,063

Filing Date: October 22, 1999

Examiner: Andrew J. Rudy

Art Unit: 3627

Title: MULTIPLE CRITERIA BUYING AND SELLING MODEL

**Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

APPEAL BRIEF

Dear Sir:

Appellant's representative submits this brief in connection with an appeal of the above-identified patent application. A credit card payment form is filed concurrently herewith in connection with all fees due regarding this appeal brief. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [GEDP106US].

I. Real Party in Interest (37 C.F.R. §41.37(c)(1)(i))

The real party in interest in the present appeal is eWinWin, Inc., the assignee of the present application.

II. Related Appeals and Interferences (37 C.F.R. §41.37(c)(1)(ii))

Appellant, appellant's legal representative, and/or the assignee of the present application are not aware of any appeals or interferences which may be related to, will directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims (37 C.F.R. §41.37(c)(1)(iii))

Claims 1-8 and 39-61 stand rejected by the Examiner. Claims 9-38 have been canceled. The rejection of claims 1-8 and 39-61 is being appealed.

IV. Status of Amendments (37 C.F.R. §41.37(c)(1)(iv))

No claim amendments have been entered after the Final Office Action.

V. Summary of Claimed Subject Matter (37 C.F.R. §41.37(c)(1)(v))**A. Independent Claim 1**

Independent claim 1 relates to a multiple criterion buying and selling method for correlating the deals for at least one of a product and service offered by the at least one seller to the price and non-price buying criteria inputted by a buyer. (*See e.g.*, pg. 7, line 28 – pg. 8, line 10). Matching deals offered by the seller are output to the buyer in real time, and the seller can be notified of buying criteria that does not match the seller criteria. (*See e.g.*, pg. 2, ll. 24-25; pg. 11, ll. 12-15).

B. Independent Claim 40

Independent claim 40 relates to a method for hosting a web site that facilitates an Internet based transaction for a sale of at least one of a good and a service (*see* pg. 10, ll. 13-15), where at least one seller outputs a list of deals in real time when a plurality of price and non-price buying criteria defined by the buyer matches a plurality of price and non-price selling criteria defined by

the seller. (*See e.g.*, pg. 7, line 28 – pg. 8, line 10). The method facilitates alerting the seller of a particular product or service when buyer defined criteria fail to match seller defined criteria. (*See e.g.*, pg. 2, ll. 24-25; pg. 11, ll. 12-15).

C. Independent Claim 47

Independent claim 47 relates to a method for linking at least one seller and at least one buyer via a computer system in order to provide the buyer a plurality of deals from the seller, each deal has different seller defined price and non-price selling criteria. This is accomplished by matching at least one deal of the plurality of deals that meets at least one buyer defined price and non-price buying criteria, the non-price criteria including at least one distribution criterion, and outputting a list of the one or more matching deals to the buyer in real time (*see e.g.*, pg. 7, line 28 – pg. 8, line 10). Moreover, the method informs the seller of a particular product or service when buyer defined criteria differ from seller defined criteria. (*See e.g.*, pg. 2, ll. 24-25; pg. 11, ll. 12-15).

D. Independent Claim 50

Independent claim 50 to an ecommerce system with means for offering a list of deals electronically to potential buyers, each deal contains both selling criteria and offering criteria for a product or service (*see e.g.*, pg. 8, ll. 8-9; pg. 11, ll. 5-7; pg. 12, ll. 8-16; FIG. 4c); and means for receiving from the potential buyer both buying criteria and ordering criteria (*see e.g.*, pg. 10, ll. 26-28; pg. 11, line 7 – pg. 12, line 1; FIGS. 4a-4b). Independent claim 50 also includes means for matching offering criteria to ordering criteria (*see e.g.*, pg. 11, ll. 15-19) and means for conducting a sale of the product or service in real time when the offering criteria matches the ordering criteria (*see e.g.*, pg. 12, ll. 1-7; FIG. 4c) and informing the seller when buying criteria does not match selling criteria (*see e.g.*, pg. 2, ll. 24-25; pg. 11, ll. 12-15).

The aforementioned means for limitations are identified as claim elements subject to the provisions of 35 U.S.C. §112 ¶6. The corresponding structures are identified with reference to the specification and drawings in the parentheticals above corresponding to those claim limitations.

E. Independent Claim 51

Independent claim 51 relates to a method for connecting potential sellers of a particular good or service with potential buyers through a computer system, and displaying in real time any deals where the order criteria from the potential buyer correspond to offer criteria from a potential seller. (*See e.g.*, pg. 7, line 28 – pg. 8, line 10). The method further includes receiving a query from a potential buyer including both buyer criteria and order criteria (*see e.g.*, pg. 8, ll. 8-9; pg. 11, ll. 5-7; pg. 12, ll. 8-16; FIG. 4c), and providing the potential seller with buyer criteria that fail to match any seller criteria (*see e.g.*, pg. 2, ll. 24-25; pg. 11, ll. 12-15).

F. Independent Claim 52

Independent claim 52 relates to a method for conducting web-based transactions comprising: displaying to a potential buyer a list of goods or services offered by a potential seller, the displaying including both seller criteria and offer criteria; displaying seller criteria based upon a selection of a particular good or service from the list, the seller criteria is determined prior to receiving buyer criteria; receiving both order criteria and buyer criteria for the selected good or service; and outputting in real time offers in which the offer criteria matches the order criteria. (*See e.g.*, pg. 7, line 28 – pg. 8, line 10; pg. 10, line 26 – pg. 12, line 21; FIGS. 4a-4c). The method further includes reporting to a seller of the selected good or service buyer criteria that does not match seller criteria. (*See e.g.*, pg. 2, ll. 24-25; pg. 11, ll. 12-15).

G. Dependent Claim 59

Dependent claim 59 depends upon the method of claim 1 and provides the act of inputting a plurality of price and non-price buying criteria occurs prior to a negotiation or acceptance between the buyer and the seller (*see* pg. 9, ll. 1-2) and/or the act of notifying the seller of the particular product or service occurs after a negotiation or acceptance is completed. (*See e.g.*, pg. 10, line 26 – pg. 12, line 21; FIGS. 4a-4c).

VI. Grounds of Rejection to be Reviewed (37 C.F.R. §41.37(c)(1)(vi))

A. Whether claims 1-8 and 39-61 are unpatentable under 35 U.S.C. §103(a) over Ephrati, *et al.* (US 7,296,001).

VII. Argument (37 C.F.R. §41.37(c)(1)(vii))

B. Rejection of Claims 1-19, 43-47 and 57-76 Under 35 U.S.C. §103(a)

Claims 1-8 and 39-61 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ephrati, *et al.* (US 7,296,001, hereinafter referred to as “Ephrati”). Reversal of this rejection is respectfully requested for at least the following reasons. Ephrati does not teach or suggest all the claimed features.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) ***must teach or suggest all the claim limitations***. In addition, there must be a reasonable expectation of success to make the proposed combination. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR v. Teleflex*, 550 U.S. ___, 127 S. Ct. 1727 (2007) *citing In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006).

The claimed subject matter relates to multiple criterion buying and selling mechanisms that can match criteria input by a buyer with criteria input by a seller in order to output to the buyer (in real time) a list of seller defined deals that match or correlate with the criteria defined by the buyer. (*See e.g.*, pg. 7, line 28 – pg. 8, line 10; pg. line 26 – pg. 12, line 21; FIGS. 4a-4c). While deals are correlated by matching criteria between a buyer and seller, both parties can define their own criteria (*see* page 11, lines 4-7; page 16, lines 15-21; FIG. 4a, element 160; FIG. 8b, element 303). Hence, the seller can be notified of buying criteria that does not match the seller criteria (*see e.g.*, pg. 2, ll. 24-25; pg. 11, ll. 12-15). Thus, sellers are afforded a convenient and powerful mechanism to gain insight into what criteria is important to buyers, of which the sellers may not have listed in their own criteria, or even be aware it would be of interest to buyers. For example, if buyers often list a warranty in their buying criteria, then the seller might be able to make more sales by including warranty information in the seller criteria and/or

improving the standard warranty to solicit more buyers, since the seller now knows this feature is often important to buyers buying the product. In particular, independent claim 47 (and similarly independent claims 1, 40, 50, 51, 52) recites, “**matching at least one deal of the plurality of deals that meets at least one buyer defined price and non-price buying criteria**, the non-price criteria including at least one distribution criterion” and “**outputting a list of the one or more matching deals to the buyer in real time.**” Ephrati does not teach or suggest these features.

Rather, Ephrati generally relates to providing a negotiation platform for buyers and sellers. (See Abstract). More specifically, Ephrati discloses a negotiation facilitator system (see FIG. 1, element 110) that can facilitate communication links (see FIG. 4, element 120) between a buyer and a seller so that these parties can negotiate terms of a potential sale of a good. In particular, the negotiation facilitator receives an offer from either a buyer or seller (see col. 4, ll. 46-49; col. 8, ll. 3-5), and posts the offer to allow an interested party to accept the offer or make a counter offer, with the negotiation facilitator enforcing rules that facilitate orderly transactions. (See FIG. 8). The offer can be either directed to a single, identified party who is then the only party who can respond to the offer, or be undirected in which case either (1) all participants on the system can respond to the offer; or (2) those that can respond are based upon a list of eligible and/or non-eligible parties. (See col. 6, ll. 45-57; col. 14, ll. 1-3). In essence, Ephrati is a computer-based tool that can be utilized to negotiate a sale, but (i) **only after** the offeree has done all the legwork of scanning through the posted offers to find what he or she wants to bid on (i.e., no “matching”); OR (ii) **only after** the offeror has personally selected the party(ies) to whom to make the offer (i.e., no “matching”). Case (i) occurs when the offer is undirected and is tantamount to a buyer scanning the want ads of a newspaper, finding a desired item, and then employing a computer-based system (Ephrati) to perform the negotiation with the seller. Case (ii) occurs when the offer is directed and is similar to a seller identifying a buyer and to whom to offer a product and then utilizing a computer-based form of negotiation to solicit the buyer rather than, say, mail or a telephone.

Accordingly, Ephrati, which discloses an offers posting platform with a negotiation mechanism, is materially distinct and considerably inapplicable to the claimed subject matter, which can allow for pre-selection of suitable criteria **prior** to negotiation. (See pg. 9, ll. 1-2). Most particularly, Ephrati does not teach or suggest “**matching at least one deal of the plurality of deals that meets at least one buyer defined price and non-price buying criteria**, the non-price

criteria including at least one distribution criterion” because Ephrati discloses no matching of buyer and seller criteria of any sort. Furthermore, even if matching is implicitly ascribed to Ephrati (or incorporated from a disparate reference), there is no teaching or suggestion of “**outputting** a list of the one or more **matching deals** to the buyer in real time.”

In more detail, Ephrati provides a platform wherein offers can be posted and viewed as well as access to the negotiation facilitator that is intended to replace traditional face-to-face negotiation after the parties to the potential sale are established. Once the active link is created between the established parties (*see* col. 7, ll. 25-29), the negotiation proceeds based upon rules enforced by the negotiation facilitator (*see* col. 13, ll. 11-15). Accordingly, it is readily apparent that Ephrati does not contemplate, teach, or suggest “**matching at least one deal of the plurality of deals that meets at least one buyer defined price and non-price buying criteria**, the non-price criteria including at least one distribution criterion.” Rather, Ephrati expressly teaches away from such features by requiring an offeror to designate in advance the parties (*e.g.*, case (ii)) who can receive the offer and/or requiring the offeree to select suitable offers (*e.g.*, case (i)) from among all offers. Appreciably, the offeree receives offers of which the offeree might have absolutely no interest pursuing (but is the recipient of the offer merely because the offeror made the designation) and/or the offeree must actively browse every offer to determine if there is an interest.

It is self-evident that in the case of a directed offer there is no matching, as the offeror expressly designates to whom an offer will be disclosed. On the other hand, for an undirected offer, the rules (*e.g.*, static rules) are still defined by the offer (*see* col. 13, ll. 20-21), and thus designated by the offeror or negotiation facilitator in advance (*e.g.*, eligibility/non-eligibility selected by offeror). Hence, while Ephrati appears to be largely irrelevant to the subject claims, even in the least irrelevant case—an undirected offer—the teachings requires the offeree to sort through all offers for which she is eligible to participate before she is apprised as to whether or not her own personal criteria (*e.g.*, whether she is even interested in that product) matches with that of the offeror (*i.e.*, no “matching”).

In fact, Ephrati expressly discloses an architecture that establishes the active link (*e.g.*, link 120) **before** any acceptance or counteroffer can be transmitted. (*See* col. 7, ll. 20-41). Therefore, at least until the time in which the link is established, the negotiation facilitator has no information about the product attributes desired by the offeree because the offeree has not

provided any information whatsoever and never does so unless the offeree makes a counteroffer, which first requires the active link to exist. In other words, only the offeror (e.g., seller) has input offer attributes (e.g., likened to selling criteria), while the offeree (e.g., buyer) has **input no attributes at all**. Appreciably, no matching between buyer defined criteria and seller defined criteria can possibly take place until buyer defined criteria is actually received by the system, and thus must occur **after** the link is established and a counteroffer (e.g., likened to buyer criteria) is received. However, all offerees to whom the offer will be disclosed are determined by the offer **before** the link is established (because only eligible offerees can establish an active link), which renders any notion of matching a moot exercise. Put another way, while it is readily apparent that Ephrati does not expressly teach matching or correlating, these features only make sense when performed prior to identifying the parties to whom to disclose the offer. Yet Ephrati cannot receive the buyer criteria necessary for matching until: (1) **after** the parties have been identified; (2) the offer is disclosed to those parties; AND (3) a counteroffer (and that alone) is received from one of those parties. Hence, matching features would be superfluous by the time such features could possibly be available to Ephrati.

It is plainly evident that Ephrati does not disclose **“matching at least one deal of the plurality of deals that meets at least one buyer defined price and non-price buying criteria, the non-price criteria including at least one distribution criterion.”** Furthermore, given that matching or correlating is not even possible until after negotiations between a buyer and seller have already begun (which precludes any useful application of matching buyer and seller criteria), applicant’s representatives respectfully submit there is no rational underpinning to support a conclusion that it would be obvious to ascribe such features to the reference. Moreover, the Examiner has not articulated any reasoning as to why such features would be obvious to include in the reference, especially in light of the fact that matching appears to have no utility unless it occurs before negotiations begin, yet at that point only criteria from one party has been received, rendering the feature impossible to implement in a useful manner.

Further still, even if it is deemed that to include features associated with matching or correlating deals based upon buyer and seller criteria is obvious, Ephrati still fails to teach or suggest **“outputting a list of the one or more matching deals to the buyer in real time,”** and it would, in fact, be impossible for Ephrati to provide these features. First, Ephrati is silent as to *real time* aspects of its offers. Second, as detailed *supra*, no matching can possibly take place in

Ephrati prior to the start of actual negotiations because that is the first moment in which the counteroffer can be received from the offeree, so prior to that there is no data from one of the parties with which to match or correlate. However, the claim expressly states “matching deals,” so the matching inherently has already occurred prior to the “outputting a list ... to the buyer.” However, in Ephrati, offers must be disclosed before any active link is established and therefore at a time prior to a possibility of performing any matching. Hence, Ephrati does not teach or suggest “*outputting a list of the one or more **matching deals** to the buyer in real time,*” and in fact is incapable of realizing these features.

Thus, it is readily apparent that Ephrati performs no matching at all. And while the Examiner has not even argued to the contrary, or afforded a response to these deficiencies when applicant’s representatives previously underscored such shortcomings, it is further apparent based upon the above comments that such features cannot be incorporated into Ephrati, as such a combination would produce a seemingly inoperative device. *“If references taken in combination would produce a ‘seemingly inoperative device,’ we have held that such references teach away from the combination and thus cannot serve as predicates for a prima facie case of obviousness. In re Sponnoble*, 405 F.2d 578, 587, 160 USPQ 237, 244, 56 C.C.P.A. 823 (1969); *see also In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In particular, features relating to matching or outputting matching deals would be inoperative (and therefore ineligible for incorporation) because matching seeks to identify offers in which a given party is likely to be interested. Yet, suggesting data from a counteroffer is used to make this determination unequivocally means that party must have already located the offer and submitted a counteroffer before Ephrati is able to determine that party might be interested in the offer.

Although Ephrati appears to be significantly deficient with respect to the subject claims, Appellant’s representatives submit this reference is relied upon solely because the rejection analysis argues the counteroffer of Ephrati provides some type of notification to the seller. By providing notification to the seller, it is then argued the counteroffer includes the “buying criteria” of the subject claims. Specifically, Independent claim 1 (and similarly independent claims 40, 47, 50-52) recites, “**notifying** the seller of the particular product or service **when the buying criteria does not match the seller criteria.**” Confronted with these claimed features, the Examiner points to the counteroffer of Ephrati, and is therefore bound to use information

included the counteroffer as the buying criteria that does not match the seller criteria, of which the counteroffer itself serves as notification to the seller.

However, the Examiner has cited no art that reads on or teaches these features in the context of matching buyer and seller criteria as claimed and discussed at length *supra*. Rather, to reject all claims, the Examiner relies entirely on Ephrati, which is simply a system to facilitate negotiations. Central to the Examiner's analysis -- in fact the only support whatsoever provided -- is the notion that a counteroffer from negotiating parties can serve as the notification to the seller that a buyer has buying criteria that differs from that of the seller. However, buying criteria is expressly detailed in all independent claims to include data that is, *inter alia*, matched to seller criteria in order to output a list of suitable deals to the buyer. For these reasons, the counteroffer cannot render obvious "notifying the seller of the particular product or service ***when the buying criteria does not match the seller criteria***," because while in a very broad sense it does appear reasonable to suggest the counteroffer serves some manner of notifying the seller, what the seller is actually notified of, as taught by Ephrati, is something decidedly different from what is claimed. Most particularly, the seller cannot be notified by the counteroffer "***when the buying criteria does not match the seller criteria***," unless at least some portion of the buying criteria is employed for matching, which is not, and cannot be the case if buying criteria is included, as is argued, in a counteroffer. Conversely, if buying criteria is argued to reside in elements of Ephrati other than the counteroffer, then the rationale of citing this reference vanishes because there is then no "notifying," as the counteroffer cannot notify about aspects of buying criteria when such criteria are not present or available to the counteroffer.

In conclusion, since the analysis assumes the counteroffer represents buyer criteria, then some part of that data (e.g., buyer criteria included in the counteroffer) must also be used to perform the claimed matching aspects, or else the counteroffer is insufficient to disclose or suggest these claimed features. However, as detailed above, Ephrati does not match buying criteria to seller criteria; does not output a list of matching deals; and does not teach or suggest virtually any other claimed feature. In fact, Ephrati cannot possibly provide such features as *matching* and outputting a list of *matching* deals because the criteria to be matched, as explained and relied upon by the analysis, is ***included in a counteroffer***. Yet a counteroffer is information that is not useful for matching criteria between buyers and sellers, since it only occurs, if at all, ***after*** negotiations between buyers and sellers have already begun (meaning only ***after*** both

parties have already discovered one another). For at least the foregoing reasons, this rejection of independent claims 1, 40, 47, 50, 51, and 52, as well as all claims that depend there from, should be reversed.

Furthermore, at page 2 of the Final Office Action (dated July 25, 2008) as well as page 2 of the Office Action (dated January 23, 2008), the Examiner concedes that “Ephrati does not explicitly disclose a service and distribution criteria,” but suggest such would have been obvious to one of ordinary skill in the art in view of an Official Notice from the July 17, 2007 Office Action. It was further argued that deeming these shortcomings as obvious is proper because applicant did not traverse the previous Official Notice. However, all assertions by the Examiner are in err. First, the Examiner has failed to provide required evidentiary support and therefore should withdraw this rejection. Second, applicant did in fact traverse all previous Official Notices. The traversals can be found at pages 12 and 13 of a Reply to Office Action filed on October 17, 2007, and reiterated again at pages 13 and 14 of a Reply to Final Office Action filed on September 25, 2008. The record is clear that applicant duly traversed these Official Notices, and therefore respectfully request that it be finally established that a *prima facie* case for obviousness has not been made with respect to independent claims 1, 40, 47, 50, 51, and 52. In particular, in addition to the deficiencies discussed *supra*, it has been expressly acknowledged that Ephrati further fails to teach or suggest, “the non-price criteria including at least one distribution criterion.” Accordingly, for yet another reason, this rejection of independent claims 1, 40, 47, 50, 51, and 52 and all dependent claims should be reversed.

Dependent Claim 59

In addition, regarding dependent claim 59, it should be readily apparent based at least upon the foregoing comments that Ephrati is materially deficient to teach or suggest the recited features: “the act of notifying the seller of the particular product or service *occurs after* a negotiation or acceptance is completed.” In particular, analysis presented for this rejection argues that the offeree’s counteroffer constitutes the act of “notifying the seller of the particular product or service when the buying criteria does not match the seller criteria” recited in independent claim 1. This rationale implicitly requires that the notification *occurs before* a negotiation or acceptance is completed, which is opposite of what is claimed. Counteroffers (*e.g.*, what is likened to the notification of non-matching terms) cannot occur after acceptance,

but must by definition occur beforehand. Therefore, the suggestion at page 3 of the Final Office Action that implementing these features “with Ephrati would have been predictable and obvious” appears to be unsupportable. Since completion of negotiation or acceptance precludes the possibility of a subsequent counteroffer, it is not predictable and obvious to implement a counteroffer that *occurs after* a negotiation or acceptance is completed. Thus, the counteroffer cannot represent the claimed act of notifying. Accordingly, in addition to the arguments set forth *supra* with respect to the base claim, this rejection of dependent claim 59 should be reversed for yet another reason.

C. Conclusion

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited references. Accordingly, it is respectfully requested that the rejections of claims 1-19, 43-47 and 57-76 be reversed.

If any additional fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Respectfully submitted,
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VIII. Claims Appendix (37 C.F.R. §41.37(c)(1)(viii))

1. A computer-implemented methodology for transacting business over a network, including:
 - at least one computer executing instructions for carrying out a method comprising:
 - offering a plurality of deals for at least one of a product and service offered by at least one seller, each of the plurality of deals includes at least one seller criteria;
 - inputting a plurality of price and non-price buying criteria by a buyer for the at least one of a product and service, the non-price criteria including at least one distribution criterion;
 - correlating the deals for at least one of a product and service offered by the at least one seller to the price and non-price buying criteria inputted by a buyer;
 - notifying the seller of the particular product or service when the buying criteria does not match the seller criteria; and
 - outputting a list of deals in real time from amongst the plurality of deals that match the buying criteria of the buyer.
2. The method of claim 1, wherein each of the plurality of deals is based on a plurality of selling criteria defined by the seller.
3. The method of claim 2, wherein each of the plurality of selling criteria defined by the seller includes an offering criteria which defines limits of each of the plurality of selling criteria defined by the seller.
4. The method of claim 3, wherein each of the plurality of buying criteria inputted by the buyer includes an ordering criteria which defines the limits of each of the plurality of buying criteria inputted by the buyer.
5. The method of claim 4, wherein the list of deals from amongst the plurality of deals that match the buying criteria of the buyer are the deals which the ordering criteria of the buyer match the offering criteria of the seller.

6. The method of claim 5, wherein the seller can add additional selling criteria to each of the plurality of deals.

7. The method of claim 1, wherein each of the plurality of buying criteria inputted by the buyer includes an ordering criteria which defines the limits of each of the plurality of buying criteria inputted by the buyer.

8. The method of claim 7, wherein the list of deals from amongst the plurality of deals that match the buying criteria of the buyer are the deals which match the ordering criteria of the buyer.

9-38 (Cancelled)

39. The method of claim 1, wherein a distribution criterion includes at least one of seller reputation, reliability, timeliness, delivery options, financing options, and warranties.

40. A method of transacting business over the Internet, comprising:

at least one computer executing instructions for carrying out a method comprising:

hosting a web site that facilitates an Internet based transaction for a sale of at least one of a good and a service;

providing access *via* the web site to at least one buyer and at least one seller to carry out the sale, the at least one seller outputs a list of deals in real time when a plurality of price and non-price buying criteria defined by the buyer matches a plurality of price and non-price selling criteria defined by the seller, wherein the buyer's non-price criteria includes at least one distribution criterion; and

alerting the seller of a particular product or service when buyer defined criteria fail to match seller defined criteria.

41. The method of claim 40, further comprising defining the plurality of selling criteria by including offering criteria which defines limits of the each of the plurality of selling criteria defined by the seller.
42. The method of claim 40, further comprising defining the plurality of buying criteria by including ordering criteria which defines limits of the each of the plurality of buying criteria defined by the seller.
43. The method of claim 40, further comprising purchasing at least one good or service from the seller when the ordering criteria of the buyer matches the offering criteria of the seller.
44. The method of claim 40, further comprising receiving a discount on the purchase based on a previous purchase made by the at least one buyer from the at least one seller.
45. The method of claim 40, further comprising limiting the commercial transaction to particular buyers that meet and accept terms and conditions governing the sale.
46. The method of claim 40, wherein the at least one seller can review other buyer defined buying criteria not used in the matching of the plurality of buying criteria and the plurality of selling criteria.

47. A computer implemented method for conducting business electronically, comprising:
linking at least one seller and at least one buyer via a computer system;
providing the buyer a plurality of deals from the seller, each deal has different seller defined price and non-price selling criteria;
matching at least one deal of the plurality of deals that meets at least one buyer defined price and non-price buying criteria, the non-price criteria including at least one distribution criterion;
informing the seller of a particular product or service when buyer defined criteria differ from seller defined criteria;
outputting a list of the one or more matching deals to the buyer in real time; and
receiving one or more orders from one or more deals from at least one buyer *via* the computer system.
48. The method of claim 47, further comprising configuring a server to provide the plurality of different buyers access to view the at least one of the plurality of deals *via* one or more of the at least one remote computers.
49. The method of claim 47, further comprising configuring a server to provide the plurality of different buyers with deals that the buyer defined buying criteria match the seller defined selling criteria.
50. A system that facilitates electronic sale of a product or service, comprising:
means for offering a list of deals electronically to potential buyers, each deal contains both selling criteria and offering criteria for a product or service;
means for receiving from the potential buyer both buying criteria and ordering criteria;
means for matching offering criteria to ordering criteria; and
means for conducting a sale of the product or service in real time when the offering criteria matches the ordering criteria and informing the seller when buying criteria does not match selling criteria.

51. A method for conducting web-based transactions comprising the following computer-implemented acts:
- connecting potential sellers of a particular good or service with potential buyers through a computer system;
 - receiving a query from a potential buyer including both buyer criteria and order criteria;
 - displaying in real time any deals where the order criteria from the potential buyer correspond to offer criteria from a potential seller; and
 - providing the potential seller with buyer criteria that fail to match any seller criteria.
52. A method for conducting web-based transactions comprising the following computer-implemented acts:
- displaying to a potential buyer a list of goods or services offered by a potential seller, the displaying including both seller criteria and offer criteria;
 - displaying seller criteria based upon a selection of a particular good or service from the list, the seller criteria is determined prior to receiving buyer criteria;
 - receiving both order criteria and buyer criteria for the selected good or service;
 - outputting in real time offers in which the offer criteria matches the order criteria; and
 - reporting to a seller of the selected good or service buyer criteria that does not match seller criteria.
53. The method of claim 52, further comprising defining the seller criteria as a set of minimum inputs based upon a determination by at least one of a system administrator and subset of the plurality of sellers, the subset including sellers of the selected good or service.
54. The method of claim 1, the at least one seller criteria is determined prior to receiving the buying criteria.
55. The system of claim 50, the selling criteria are received from the potential seller and the selling criteria describe both a price and non-price feature of the product or service.

56. The system of claim 50, the buying criteria are received from the potential buyer and the buying criteria describe both a price and non-price feature of the product or service.
57. The system of claim 50, the offering criteria define a value or range of the selling criteria.
58. The system of claim 50, the ordering criteria define a value or range of the buying criteria.
59. The method of claim 1, the act of inputting a plurality of price and non-price buying criteria occurs prior to a negotiation or acceptance between the buyer and the seller and/or the act of notifying the seller of the particular product or service occurs after a negotiation or acceptance is completed.
60. The method of claim 47, further comprising omitting from the act of matching the buyer defined criteria that differ from the seller defined criteria and alerting a particular seller of the buyer defined criteria that differs when the particular seller does perform the act of outputting a list to the buyer.
61. The method of claim 47, further comprising omitting from the act of matching the buyer defined criteria that differ from the seller defined criteria and alerting a particular seller of the buyer defined criteria that differs when the particular seller does not perform the act of outputting a list to the buyer.

IX. Evidence Appendix (37 C.F.R. §41.37(c)(1)(ix))

None.

X. Related Proceedings Appendix (37 C.F.R. §41.37(c)(1)(x))

None.